IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 582 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NURJAHAN BEGAM MUMTAZKHAN PATHAN & 2 - Appellant(s)
Versus
J H PARABIA AND CO & 2 - Defendant(s)

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Appearance :

Ms NILDHARA DESAI for MR JASHBHAI P PATEL for Appellant(s) : 1 - 3.
NOTICE SERVED for Defendant(s) : 1,
MR NAGIN N GANDHI for Defendant(s) : 2,
MR UDAY BHATT A.G.P. for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 14/11/2006

ORAL JUDGMENT

1. Original claimants have approached this Court under Section 110-D of the Motor Vehicles Act [hereinafter referred to as the “Act”] seeking

enhancement of the compensation awarded to them by MACT [Main] of Kheda at Nadiad by award dated 22nd February, 1984 in MACP No. 509 of 1982. The appellants claimed Rs.75,000=00 for the death of their near relative i.e., son of appellant no. 1 and brother of appellants no. 2 and 3 in a vehicular accident that occurred on 24th October, 1981 at Balasinor Sevalia road. The deceased was travelling in a truck bearing registration no. GTG 4321, which was driven by driver of respondent no. 1. It was averred in the Claim Petition that he drove the vehicle rashly and negligently and as a result of which, when it reached the place near Vanakbori Thermal Power Station, the driver lost the control over it and the vehicle toppled down. Several persons were travelling in the said vehicle. Some of them received injuries, including the deceased who was hospitalized for treatment in SSG Hospital at Vadodara. He survived for two days and thereafter expired. The appellants, therefore, approached the Claims Tribunal Kheda at Nadiad by fling Claim Petition No. 509 of 1982. According to them, the deceased was serving as a crane driver in a company known as J.H. Parabia. He was getting salary of Rs.360=00 per month. Over and above the same, he was also getting remuneration for working overtime. Thus, his overall salary per month was Rs.600/-. It is further averred that the deceased was

aged about 21 years and he was unmarried. On the basis of these facts, claim of Rs.75,000=00 was made before the Tribunal. At the trial, the parties led evidence, oral as well as documentary. On the basis of the material produced before it, the Tribunal by common judgment disposed of all the petitions which were filed in respect of present accident. So far as the case on hand is concerned, the Tribunal awarded Rs.25,100=00 as total compensation for the death of the deceased. The appellants have, therefore, approached this Court on the ground that the compensation granted by the Tribunal is inadequate and it is required to be enhanced.

2. I have heard Ms. Nildhara Desai learned advocate for the appellants. She has taken me through the record of this appeal. She has contented that the compensation awarded by the Tribunal is very less on all the counts and it is required to be enhanced. According to her, the income of the deceased assessed by the Tribunal is on lower side. She has also submitted that no compensation is awarded for pain and suffering. She has, therefore, submitted that the appeal be allowed. Mr. Bhatt learned A.G.P., appearing for respondent no. 3 has supported the judgment.

3. There is no dispute that the deceased was aged

about 20 to 21 years. He was unmarried. It is also not disputed that he was working as crane driver with J.H. Parabia & Company. The question is whether the award made by the Tribunal under the head dependency benefit is just and proper. To appreciate this issue, the evidence on the aspect of income of the deceased has to be taken into account. The appellant has stated that he was drawing salary of Rs.360=00 per month and also drawing remuneration for working overtime. According to her, the deceased was earning about Rs.600=00 per month. She has further stated that the deceased knew the motor cycle repairing work. The Tribunal has however, not believed the version of the appellant fully and it has assessed the income of the deceased at Rs.300=00, on the ground that no evidence corroborated the version of the appellant regarding salary of the deceased. The Tribunal has thereafter held that since the deceased was a bachelor, the dependents would be entitled to receive one-third of the income as their dependency benefit. It has, therefore, considered the loss of dependency benefit at Rs.100=00 per month. The Tribunal, as it appears clearly from the judgment, has not at all taken into consideration, certain other relevant factors which are required for determining the loss of dependency benefit. As stated above, the deceased was aged about 20 to 21

years. He had long life ahead of him. With the passage of time his salary would have increased or he would have got the job with better prospects than the existing one. In other words, his income would not have remained static, but it would have increased with the passage of time. It also appears that the Tribunal has without any reason not accepted the version of appellant no. 1 regarding salary of the deceased. It appears that she has not made any exaggeration. It is her say that as crane driver, he was receiving Rs.360=00 per month by way of salary. This amount, by any stretch of imagination cannot be said to be inflated one. In fact, it is much on lower side, even considering the standard of salary of those days. Further considering the nature of job he was doing, there is every possibility that he might have been required to work over and above the usual duty hours. He was, therefore, entitled to receive remuneration for working overtime or beyond the duty hours. He was of young age. The deceased could have earned more money by working overtime than the regular salary, I therefore, find no justification for Tribunal to consider the income of the deceased at Rs.300=00 in place of Rs.600=00. There is no doubt in my mind that the income of the deceased could have been in the vicinity to Rs.500=00 per month. Further the Tribunal has not considered the issue from the angle

of increase in income. The deceased was aged about 20-21 years. He was put in charge of operating crane by his master. Thus onerous duty of driving vehicle and operating crane was thrown on him. This must have been done only keeping in view his competence. Therefore, there is every reason to believe that with the passage of time, the deceased would have doubled the income by putting in hard work and would have at least increased it by one & half to two times. By doing usual exercise for determining the future loss of income, it appears that the average income of the deceased would have been Rs.600=00 per month and that was the future loss of income of the deceased. However, the Tribunal has rightly held that since the deceased was a bachelor and, therefore, he would have diverted two-third of income to his own family, after his marriage and the appellants would have been entitled to receive only one-third of the total income. Considering Rs.600=00 to be income of the deceased, the loss of dependency benefit so far the present appellants are concerned, it would have been at Rs.200=00 per month, that would be Rs.2,400=00 per year. The Tribunal has applied multiplier of 15 years. In my opinion, the same is just and proper. Therefore, the loss of dependency benefit is Rs.36,000=00. The Tribunal has awarded a sum of Rs.18,000=00 on this count. The

appellants, therefore, deserve additional Rs.18,000=00 on the ground of loss of dependency benefit.

4. It may also be noted here that the deceased has remained in the hospital for two days. He himself suffered pain and agony of the injuries. At the same time, the appellants also suffered agony on account of witnessing the suffering of the deceased for two days. Though the appellants did not witness the actual accident, they saw suffering of the deceased for two days and that must have caused them substantial pain and shock. Hence, on this count also some compensation is required to be awarded to them. In my opinion, Rs.5,000=00 will be just and proper compensation for this head. The Tribunal awarded Rs.200 and Rs.1000 for medical expenses and after death ceremony expenses, respectively. This is slightly on lower side. Hence, the total amount under both these heads can be doubled and Rs.2,500=00 can be awarded for medical expenses and for performing after death ceremony. The appellants, therefore, deserve additional sum of Rs.24,300=00 by way of compensation over and above the compensation awarded by the Tribunal together with proportionate costs and interest at the rate of 6% on the additional amount from the date of the application till realization.

5. The net result is that the appeal is partly allowed.

6. R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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